

# Zoning Amendment

# Application

RECEIVED



Department of Planning, Building and Development  
Room 166, Noel C. Taylor Municipal Building  
215 Church Avenue, S.W.  
Roanoke, Virginia 24011  
Phone: (540) 853-1730 Fax: (540) 853-1230

APR 20 2015

CITY OF ROANOKE  
PLANNING BUILDING &  
DEVELOPMENT

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Date: April 16, 2015

Submittal Number:

Amended Application No. 1

## Request (select all that apply):

☒ Rezoning, Not Otherwise Listed

☒ Rezoning, Conditional

☐ Rezoning to Planned Unit Development

☐ Establishment of Comprehensive Sign Overlay District

☐ Amendment of Proffered Conditions

☐ Amendment of Planned Unit Development Plan

☐ Amendment of Comprehensive Sign Overlay District

## Property Information:

Address: 1909 Valley View Blvd., Roanoke, VA 24102

Official Tax No(s): #2380110

Existing Base Zoning:

(If multiple zones, please manually enter all districts.)

CG

☐ With Conditions

☒ Without Conditions

Ordinance No(s) for Existing Conditions (If applicable):

Requested Zoning: CLS

☒ With Conditions

☐ Without Conditions

Proposed

Land Use:

Retail Sales Establishment

## Property Owner Information:

Name: Shakers Restaurant Corporation

Phone Number: +1 (434) 660-4011

Address: 106 Goldenrod Place, Lynchburg, VA 24502

E-Mail: JohnB@shakers.com

Property Owner's Signature:

## Applicant Information (if different from owner):

Name:

Phone Number:

Address:

E-Mail:

Applicant's Signature:

## Authorized Agent Information (if applicable):

Name: Tim Scoggin

Phone Number: +1 (865) 719-3330

Address: 152 S. Main Street, Marshall, NC 28753

E-Mail: tscoggin@madisonrealtyservice.com

Authorized Agent's Signature:

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- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Rezoning, Not Otherwise Listed            | <input type="checkbox"/> Amendment of Proffered Conditions                |
| <input checked="" type="checkbox"/> Rezoning, Conditional                     | <input type="checkbox"/> Amendment of Planned Unit Development Plan       |
| <input type="checkbox"/> Rezoning to Planned Unit Development                 | <input type="checkbox"/> Amendment of Comprehensive Sign Overlay District |
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Phone Number:

Address:

E-Mail:

Applicant's Signature:

### Authorized Agent Information (if applicable):

Name: Tim Scoggin

Phone Number: +1 (865) 719-3330

Address: 152 S. Main Street, Marshall, NC 28753

E-Mail: tscoggin@madisonrealtyservice.com

Authorized Agent's Signature:



# Zoning Amendment Application Checklist



The following must be submitted for all applications:

- ☐ Completed application form and checklist.
- ☐ Written narrative explaining the reason for the request.
- ☐ Metes and bounds description, if applicable.
- ☐ Filing fee.

For a rezoning not otherwise listed, the following must also be submitted:

- ☐ Concept plan meeting the Application Requirements of item '2(c)' in Zoning Amendment Procedures.

For a conditional rezoning, the following must also be submitted:

- ☐ Written proffers. See the City's Guide to Proffered Conditions.
- ☐ Concept plan meeting the Application Requirements of item '2(c)' in Zoning Amendment Procedures. Please label as 'development plan' if proffered.

For a planned unit development, the following must also be submitted:

- ☐ Development plan meeting the requirements of Section 36.2-326 of the City's Zoning Ordinance.

For a comprehensive sign overlay district, the following must be submitted:

- ☐ Comprehensive signage plan meeting the requirements of Section 36.2-336(d)(2) of the City's Zoning Ordinance.

For an amendment of proffered conditions, the following must also be submitted:

- ☐ Amended development or concept plan meeting the Application Requirements of item '2(c)' in Zoning Amendment Procedures, if applicable.
- ☐ Written proffers to be amended. See the City's Guide to Proffered Conditions.
- ☐ Copy of previously adopted Ordinance.

For a planned unit development amendment, the following must also be submitted:

- ☐ Amended development plan meeting the requirements of Section 36.2-326 of the City's Zoning Ordinance.
- ☐ Copy of previously adopted Ordinance.

For a comprehensive sign overlay amendment, the following must also be submitted:

- ☐ Amended comprehensive signage plan meeting the requirements of Section 36.2-336(d) of the City's Zoning Ordinance.
- ☐ Copy of previously adopted Ordinance.

For a proposal that requires a traffic impact study be submitted to the City, the following must also be submitted:

- ☐ A Traffic Impact Study in compliance with Appendix B-2(e) of the City's Zoning Ordinance.

For a proposal that requires a traffic impact analysis be submitted to VDOT, the following must also be submitted:

- ☐ Cover sheet.
- ☐ Traffic impact analysis.
- ☐ Concept plan.
- ☐ Proffered conditions, if applicable.
- ☐ Required fee.

\*An electronic copy of this application and checklist can be found at [www.roanokeva.gov/pbd](http://www.roanokeva.gov/pbd) by selecting 'Planning Commission' under 'Boards and Commissions'. A complete packet must be submitted each time an application is amended, unless otherwise specified by staff.

April 17, 2015

**To expedite your receipt of the enclosed material,  
it has been sent without a cover letter**

TO: **Via Federal Express**  
Katharine Gray, Architect  
Roanoke Department of Planning, Building & Development  
Noel C. Taylor Municipal Building  
215 Church Avenue, S.W., Rm 166  
Roanoke, VA 24011

FROM: S. Henry ("Hank") Creasy IV

RE: Shakers Restaurant Corporation

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**APR 20 2015**

**CITY OF ROANOKE  
PLANNING BUILDING &  
DEVELOPMENT**

Enclosed please find the following:

1. Zoning Amendment Application;
2. Shakers Restaurant Corporation Letter and Proffers;
3. Corporate Resolution of the Sole Director and Sole Stockholder of Shakers Restaurant Corporation;
4. Site Plans;
5. Construction, Operation and Reciprocal Easement Agreement (excerpt as to parking notice);
6. Joint Driveway Easement; and
7. Relocation of Access Easement.

If you have any questions concerning the enclosed, please contact me.

Shakers Restaurant Corporation  
106 Goldenrod Place  
Lynchburg, VA 24502

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APR 20 2015

CITY OF ROANOKE  
PLANNING BUILDING &  
DEVELOPMENT

April 17, 2015

Planning Commission  
% Ian Shaw, Agent of the Planning Commission  
Planning, Building and Development  
Noel C. Taylor Municipal Building  
215 Church Avenue, S.W., Room 170  
Roanoke, Virginia 24011

Re: REVISED Application for change in zoning of Shakers Restaurant Parcel at 1909 Valley View Blvd.

Dear Planning Commission:

Shakers Restaurant Corporation, 1909 Valley View Blvd., sits on a 2 acre parcel that it has operated a restaurant on for many years. We have been approached and would like to build a 4500 square feet mattress store at the far end of our parking lot facing Valley View Blvd. West.

The current zoning on the property is CG. In order to make this new building fit with the existing restaurant and other building on the street we would like to change the zoning of the parcel to CLS with certain proffered conditions. Either zoning classification would allow this new use but the CG setback requirements would severely impair the development of the new building.

All the existing buildings on Valley View Blvd. West currently sit off the street enough to allow parking in front of the buildings. Under CG the new building would have to be pulled up to the street with parking in the rear. The main concern of this design is the safety of consumer car traffic. A lot of the customers of Shakers restaurant currently use the far entrance and exit on Valley View Blvd. West so as to avoid making a left turn out closer to Valley View Blvd traffic that is turning on to Valley View Blvd. West. If there is not a drive lane in front of the new building to be developed then customers would use the entrance closer to the restaurant that is closer to the Valley View Blvd intersection which would create more traffic and safety issues than exist today. Also if the new building was built close to the street then the shared entrance and exit drive with the adjacent Casual male building would create safety issues for their customers as it would be harder to see around the new building when making a turn out of their lot.

We feel that CLS with conditions would be the best solution for our lot and ask the planning commission to grant this request. We have revised our proffers based on city review and comments.

Thank you.

Sincerely,



John Buckles  
Shakers Restaurant Corporation

**Proffered Conditions to be Adopted**

The applicant hereby requests that the following proffered conditions be adopted as they pertain to Official Tax No. 2380110.

1. Any new building will comply with the dimensional regulations and development standards for the CG, Commercial- General District, with the exception of the minimum and maximum front yard and the impervious surface area maximum of the Zoning Ordinance. The maximum front yard for any new buildings will be 80 feet from Valley View Boulevard West, NW and 90 feet from Valley View Boulevard, NW. The impervious surface area maximum for the parcel will be 80 percent of the lot area.
2. The primary entrance to the new building shall be visible from and oriented towards the closest street (Valley View Boulevard West, NW or Valley View Boulevard, NW).
3. A 5 feet wide sidewalk shall be provided along Valley View Boulevard West, NW.
4. A landscaping strip along new parking areas shall conform to the requirements of Section 36.2-647 and 649 of the Zoning Ordinance with a minimum of six large deciduous trees per Table 642-1 of the Zoning Ordinance placed adjacent to the right of way between the parking area and the street.
5. A minimum of 50% of the interior parking lot trees shall be large deciduous trees per Table 642-1 of the Zoning Ordinance. Spacing will be per Table 649 of Zoning Ordinance.

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**APR 22 2015**

**CITY OF ROANOKE  
PLANNING BUILDING &  
DEVELOPMENT**

SHAKERS RESTAURANT CORPORATION

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JOINT ACTION BY UNANIMOUS WRITTEN CONSENT  
OF SOLE DIRECTOR OF THE BOARD OF DIRECTORS  
AND SOLE STOCKHOLDER  
IN LIEU OF MEETINGS

---

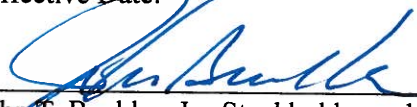
Pursuant to Sections 13.1-685 and Section 13.1-657 of the Code of Virginia 1950, as amended, the undersigned, being the sole Director and sole stockholder of SHAKERS RESTAURANT CORPORATION, a Virginia corporation (the "Corporation"), does hereby approve and adopt the following action by written consent in lieu of meetings of the Board of Directors and the sole stockholder of the Corporation and waives all requirements of notice, statutory or otherwise:

RESOLVED, that the President of the Corporation, John T. Buckles, is hereby authorized and directed to submit an application for and seek the rezoning of real property of the Corporation (the "Property") shown and described on a plan titled "Concept Plan for Mattress Firm, Roanoke Virginia" made by Doyle Allen, P.E., of Hurt & Proffitt, Inc., dated 3/30/2015 ("Plan"), from CG to CGL subject to certain proffered conditions submitted with the application by letter dated of even date with this resolution, to allow the redevelopment of a portion of the Property as a retail mattress store, as shown on the Plan, and continued use of the existing building as a Shakers Restaurant location.

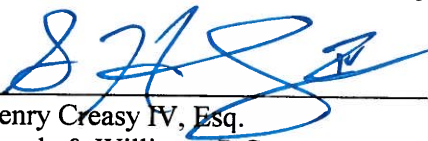
**Effective Date: April 17, 2015**

Witness the following signature as of the Effective Date.

4/17/15  
Date of Execution

  
John T. Buckles, Jr., Stockholder and Director

Attest: The undersigned hereby confirms, as counsel to the Corporation, the authority of John T. Buckles, Jr., as the President of the Corporation, pursuant to this resolution.

  
S. Henry Creasy IV, Esq.  
Edmunds & Williams, P.C.  
828 Main Street, 19<sup>th</sup> FL  
Lynchburg, VA 24504



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**CONSTRUCTION, OPERATION AND  
RECIPROCAL EASEMENT AGREEMENT**

This Construction, Operation and Reciprocal Easement Agreement (hereinafter referred to as the "REA") is made as of the 5<sup>th</sup> day of December, 1983, by and among

**HERSCH ASSOCIATES**, a North Carolina limited partnership with its principal office at 122 East Stonewall Street, Charlotte, North Carolina 28202 whose general partner authorized to sign this agreement is Henry J. Faison, a resident of Charlotte, North Carolina ("Hersch");

**VALLEY VIEW ASSOCIATES, LTD.**, a North Carolina limited partnership with its principal office at 122 East Stonewall Street, Charlotte, North Carolina, whose sole general partner is Hersch and whose sole limited partner is **Noro-Valley View Associates, Ltd.**, a Georgia general partnership, whose sole general partner is **Noro-Valley View Holding Company N.V.**, a Netherlands Antilles corporation ("Developer");

**SEARS, ROEBUCK AND CO.**, a New York corporation with its Eastern Territory offices at 555 East Lancaster Avenue, St. Davids, Pennsylvania 19087 ("Sears");

**THALHIMER BROTHERS, INCORPORATED**, a Virginia corporation with its principal office at 615 East Broad Street, Richmond, Virginia 23219 ("Thalhimer");

**ALSTORES REALTY CORPORATION**, a Delaware corporation with its principal office at 1114 Avenue of the Americas, New York, New York 10036 ("Alstores"), and **ASC STORES III, INC.**, a Delaware corporation with an office at 517 East Broad Street, Richmond, Virginia 23217 ("ASC Stores"), it being understood the term "M & R" as used herein shall mean and refer to whichever of Alstores or ASC Stores shall be entitled to and in possession of the M & R Parcel, provided, however, that in the event neither Alstores nor ASC Stores shall be entitled to and in possession of the M & R Parcel, M & R shall mean and refer to Alstores; and

**ROANOKE LEGGETT REALTY ASSOCIATES**, a Virginia general partnership with its principal office in Lynchburg, Virginia ("Associates"), and **LEGGETT OF VIRGINIA, INC.**, a Virginia corporation with its principal office in Lynchburg, Virginia ("L of V"), it being understood the term "Leggett" as used herein shall mean both Associates and L of V.

all hereinafter referred to jointly as the "Parties."

**RECITALS**

1. Developer owns in fee simple certain land containing approximately 31.215 acres situated in the City



of Roanoke and State of Virginia, more particularly described in Exhibit A, Part 1 (hereinafter called "Developer Parcel") and located as shown on the Plot Plan hereto annexed as Exhibit B ("Plot Plan").

2. Sears owns in fee simple certain land containing approximately 12.000 acres situated in the City of Roanoke and State of Virginia, more particularly described in Exhibit A, Part 2 (hereinafter called "Sears Parcel") and located as shown on Exhibit B.

3. Thalhimers owns in fee simple certain land containing approximately 8.104 acres situated in the City of Roanoke and State of Virginia, more particularly described in Exhibit A, Part 3 (hereinafter called "Thalhimers Parcel") and located as shown on Exhibit B.

4. M & R owns in fee simple certain land containing approximately 7.135 acres situated in the City of Roanoke and State of Virginia, more particularly described in Exhibit A, Part 4 (hereinafter called "M & R Parcel") and located as shown on Exhibit B.

5. Leggett owns in fee simple certain land containing approximately 6.973 acres situated in the City of Roanoke and State of Virginia, more particularly described in Exhibit A, Part 4 (hereinafter called "Leggett Parcel") and located as shown on Exhibit B.

6. Developer owns in fee simple those additional parcels of land shown as "Drainage Lake-Developer Reserved Parcel 1," "Future Sears Gas Island-Developer Reserved Parcel 3," "Access Parcel A," "Access Parcel B," "Access Parcel C," "Reserved for Future Parking-Developer Reserved Parcel 2," and "Reserved for Future Parking-Developer Reserved Parcel 4" on Exhibit B, containing in the aggregate approximately 15.994 acres, situated in the City of Roanoke and State of Virginia, more particularly described in Exhibit A, Part 5, which parcels of land shall be referred to as the "Developer Reserved Parcel(s)."

7. Hersch owns in fee simple certain land containing approximately 60.807 acres situated in the City of Roanoke and State of Virginia, more particularly described in Exhibit A, Part 7 (hereinafter called "Fringe Parcels"), and shown located on Exhibit B.

7. The Developer Parcel, Sears Parcel, Thalhimers Parcel, M & R Parcel, Leggett Parcel and Developer Reserved Parcel(s), as individually described by metes and bounds in Exhibit A, Parts 1, 2, 3, 4, 4.1 and 5, respectively, and located as shown on Exhibit B are collectively called the "Shopping Center Site," which term is defined in Section 1.35 hereof.

8. The parties desire to make an integrated use of their Parcels and to develop and improve those Parcels to create a two-level enclosed mall-type regional shopping center.

9. The Parties desire to provide for the construction, maintenance and operation of the Common Area and the buildings and other improvements to be situated on and off the Shopping Center Site, as shown on the Plot Plan, and in that regard to create certain rights, privileges, obligations duties and easements and to impose certain restrictions and covenants upon their respective Parcels and the Shopping Center Site.

NOW, THEREFORE, for good and valuable consideration, including the mutual promises, covenants and agreements herein contained, the Parties agree as follows:

#### ARTICLE I

#### DEFINITIONS

As used in this REA, the following terms have the following meanings:

Section 1.1 Access Road(s)

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"Access Road(s)" means those roads providing ingress to and egress from the Ring Road on the Shopping Center Site to the existing and proposed streets and which are located as shown and designated on Exhibit C as Access Parcels A, B, C and D and cross hatched on the Plot Plan.

Section 1.2 ASC Building

"ASC Building" means the building designated as such or as "TBA" on Exhibit "B" which each Major, respectively, may cause to be constructed on its Parcel, whether or not such building is attached to its Main Building, suitable for the storage and/or sale of merchandise or service, including, but not limited to, use as a store specializing in the sale and installation of tires, batteries, automobile accessories and lubricants and repair of motor vehicles other than body work. For purposes of this Agreement, the ASC Building shall be deemed to be a building separate and apart from said Major's Main Building, even if physically attached thereto.

Section 1.3 Car Space

"Car Space" means a paved and striped area for the parking of motor vehicles, as shown on the Plot Plan. Each Car Space shall have the minimum dimensions set forth in Section 15.1.

Section 1.4 Center

"Center" means the Shopping Center Site defined in Section 1.35, together with all buildings and other improvements constructed at any time thereon, which Center shall be known as Valley View as provided in Section 9.3.

Section 1.5 Common Area

"Common Area" means all areas within the boundaries of the Shopping Center Site and improvements therein and thereon that under this REA are to be made available for the non-exclusive use, convenience and benefit of the Parties

hereto and their "Permittees" as hereinafter defined, if authorized pursuant to Section 10.13 hereof, which shall be deemed to include but without limitation the following:

(a) the Parking Area (including without limitation Access Roads and Ring Road); (b) the Enclosed Mall including all amenities in the Enclosed Mall after its completion except for the areas thereon occupied by kiosks; (c) sidewalks and walkways, including Perimeter Sidewalks located exterior to the perimeter of all buildings; (d) landscaped and planted areas including such areas lying between the Perimeter Sidewalks and the buildings on each Party's Parcel; (e) all curbs and lighting standards, traffic and directional signs and traffic striping and markings located within the Center; (f) retaining walls and grade separations (other than retaining walls which are an integral part of a building); (g) Common Utility Facilities; (h) fire corridors leading from the Enclosed Mall or between the Mall Store Buildings and the Main Building of a Major; and (i) for so long as same are covered by any Easement rights as set forth in Sections 10.11 and 10.12, the Drainage Lake Area referred to in said Section 10.11 and the Buffer Zones referred to in said Section 10.12, respectively.

Notwithstanding the foregoing, there shall not be included in Common Area any gasoline pump island facilities and adjacent apron or Truck Facilities.

#### Section 1.6 Common Utility Facilities

"Common Utility Facilities" means all storm drainage facilities, sanitary sewer systems, natural gas systems (if any), water systems, fire protection installations (including such booster pumps or reservoirs and fire pumps as may be required by each Party's fire insurance rating organization at the time of the approval of the Final Improvement Plans), and underground electrical power, cable TV (if available), and telephone systems situated on the Shopping Center Site,



each respectively at elevations and specific points of entry stipulated by each Party as to its respective buildings. Included within the Common Utility Facilities are the drainage lakes located within the Developer Reserved Parcel(s).

#### Section 1.7 Condemnation

"Condemnation" means (a) the temporary or permanent taking of all or any part of the Shopping Center Site or the possession thereof under the power of eminent domain; or (b) the voluntary sale or conveyance of all or any part of the Shopping Center Site to any body or entity having the power of eminent domain provided that such portion of the Shopping Center Site is then under the actual or imminent threat of eminent domain.

#### Section 1.8 Developer Improvements

The "Developer Improvements" means those improvements defined in Section 6.1.

#### Section 1.9 Deleted

#### Section 1.10 Enclosed Mall

"Enclosed Mall" means the two-level enclosed, lighted, sprinklered, heated, ventilated and air-conditioned mall to be located on the Developer Parcel as shown on the Plot Plan, and thereon designated "Enclosed Mall".

#### Section 1.11 Floor Area

"Floor Area" means the aggregate, from time to time, of the actual number of square feet of enclosed floor space in any building located on the Shopping Center Site, exclusively appropriated for use by an Occupant, whether or not actually occupied.

Floor Area shall include, but without limitation:

- (a) Basement space and subterranean areas;
- (b) Balcony and mezzanine space except as provided in (c) of this Section 1.11;
- (c) Space occupied by columns, stairs, escalators, dumb-waiters, conveyors or other interior equipment

within the building involved (except as excluded below);  
and

(d) Floor space occupied by the kiosks located within the Enclosed Mall, including in the case of kiosks having open counters for the purpose of serving customers, an area four (4) feet in depth outside such open counters.

Notwithstanding the foregoing provisions of this definition, Floor Area shall not include space for:

(e) The second or more levels of any multi-deck stock area being used exclusively by an Occupant for stocking and storage of merchandise to be sold by such Occupant in the premises occupied by it within the Center;

(f) Areas, including penthouses, used primarily to house mechanical, electrical, telephone, air-conditioning and similar equipment, including any computer equipment not used for sale or lease to third persons and used solely for the Occupant, and any garbage (or other waste) collecting area or waste baling or compacting area;

(g) The Center's management and security offices, the Merchant's Association or Promotional Fund office and the area, if any, set aside by Developer as a community auditorium, not to exceed 6,000 square feet of floor space in the aggregate;

(h) Common Area maintenance office and equipment storage areas used exclusively for the storage of maintenance and promotional equipment, supplies and materials for Common Area maintenance and Center promotions which are includable in Developer's Improvements;

(i) The Enclosed Mall, except for areas thereof occupied by kiosks;

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(j) Outdoor Selling Areas as defined in Section 1.22 so long as such Outdoor Selling Areas are not enclosed so as to be reasonably capable of being heated, ventilated or air-conditioned by mechanical means;

(k) Truck Facilities;

(l) Fire and service corridors required by building codes and not contained within any areas exclusively appropriated for the use of any single Occupant;

(m) Public restrooms.

Floor Area shall be measured from the exterior faces of the exterior walls (including basement walls), except that where party and interior common walls are involved, the Floor Area shall be measured from the center thereof instead of from the exterior faces thereof.

#### Section 1.11A Fringe Parcels

Those parcels located adjacent to the Shopping Center Site owned by Hersch, so designated on the Plot Plan and described on Exhibit A, Part 7.

#### Section 1.12 Improvements or Parties' Improvements

"Improvements", or "Parties' Improvements" means the buildings, structures and improvements which as to Developer are defined in Section 6.1 hereof and as to each Major are defined in Section 7.2 hereof, and any additions thereto, or replacements thereof, or either of same, made in accordance with this REA. As used in this REA, "Improvements" or "Parties' Improvements" shall mean the Developer Improvements, or one or more Major's Improvements, or any combination of all of such Improvements as the context may require.

#### Section 1.13 Institution

"Institution" means a bank, savings and loan association, trust company, insurance company, public pension fund or retirement fund, private pension or retirement fund having a bank or trust company as trustee, or, private pension or retirement fund which is a limited partner of Developer

or owns a controlling interest in a limited partner of Developer. Notwithstanding, the foregoing, a private pension or retirement fund which is a limited partner of Developer or owns a controlling interest in a limited partner of Developer shall not be treated as an "Institution" for purposes of Sections 17.3 and 18.7 hereof.

#### Section 1.14 Interest

"Interest" means the interest computed at the prime rate then being announced or published by the Chase Manhattan Bank, as the rate charged to its most valued high credit non-governmental customer at the time the expenditure on which the interest is being computed was made plus an amount equal to 1% above such prime rate. In no event shall Interest exceed the applicable maximum rate permitted to be charged by the laws of Virginia.

#### Section 1.15 Lease

"Lease" means any lease, deed or other instrument or arrangement in writing (other than this REA) whereby an Occupant acquires rights to use and/or occupy Floor Area.

#### Section 1.15A Leggett Improvements

"Leggett Improvements" means the improvements defined in Section 7.2(d).

#### Section 1.16 Main Building(s)

"Main Building(s)" means, with respect to each Major, the two or more story building permitted or required by this REA to be constructed by or for each Major within each Major's Permissible Building Area, but such term does not include a Major's ASC Building, if any, whether or not attached to the Main Building.

#### Section 1.17 Majors

"Majors" or "Major" means Sears, Thalhimers, M & R and any owner or ground lessee of a portion of the Shopping Center Site on which a single specialty or department store building, used primarily by a single Occupant and containing



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50,000 square feet or more of Floor Area is located and their respective successors and assigns, or any one or any combination thereof as the context may require.

Section 1.18 Mall Store Building(s)

"Mall Store Building(s)" means the buildings which Developer is obligated or permitted to construct pursuant to this REA and which are within Developer's Permissible Building Area and which abut or open on the Enclosed Mall.

Section 1.19 M & R Improvements

"M & R Improvements" means those improvements defined in Section 7.2(a).

Section 1.19A Mortgage

The term "mortgage" as used in this REA shall be deemed to mean and include a deed of trust as well as a mortgage, if and when applicable, and the term "mortgagee" as used in this REA shall be deemed to mean and include the beneficiary under a deed of trust as well as a mortgage, if and when applicable.

Section 1.20 Occupant

"Occupant" or "Occupants" mean each Major, Developer and any other Person entitled by lease, deed or other written conveyance to use and occupy Floor Area within the Center, or one or more of them, and their respective licensees, concessionaires and subtenants as the context may require.

Section 1.21 Opening Date

"Opening Date" means the date defined in Section 8.1, which date is subject to change as provided in Section 8.1.

Section 1.22 Outdoor Selling Area

"Outdoor Selling Area" means that part of the Center where outdoor selling, including the display and storage of merchandise incidental thereto, may be conducted from time to time, and which has been identified on the Plot Plan attached as Exhibit B as an Outdoor Selling Area.

Section 1.23 Parcel

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"Parcel" or "Parcels" mean the Developer Parcel, the Developer Reserved Parcel(s), Sears Parcel, Thalhimers Parcel, M & R Parcel, Fringe Parcel(s) or any combination or portions thereof, as the context may require. Any portion(s) of the Developer Parcel which is intended to be conveyed or land leased to a Major and is shown on Exhibit B as a Future Store Parcel, FUTURE or PENNEY shall be a separate Parcel for purposes of this REA upon conveyance or land lease to a Major, if such conveyance is subject to terms and provisions of this REA applicable to a Major.

Section 1.24 Parking Area

"Parking Area" means all areas in the Center which are set apart or used from time to time for automobile and other vehicular traffic and for the parking of motor vehicles, including without limitation multi-level parking decks, and all traffic lanes, aisles and roadways (including the Ring Road and Access Roads) and curbs adjacent thereto, vehicle parking stalls, pedestrian walkways (other than Perimeter Sidewalks as defined in Section 1.26), grade separations including retaining walls (other than retaining walls which are an integral part of a Party's building), and landscaping within or adjacent to such areas (but excluding landscaped areas between Perimeter Sidewalks and the buildings served by such Perimeter Sidewalks), lighting standards and traffic and directional signals.

Parking Area does not include any Outdoor Selling Areas, Truck Facilities, or gasoline pump island facilities and adjacent apron.

Section 1.25 Party

A "Party" means each separate entity, now or hereafter entering into and executing this REA, whether or not such entity is an individual, or individuals (that is, natural person, or persons), a partnership (general or limited), a

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joint venture or corporation, or, subject to compliance with the provisions of Article 20 of this REA, any successor to any such entity permitted under the provisions of this REA, and being referred to collectively herein as "Parties." In the event, under any circumstances, a Parcel may be owned by more than one entity in undivided ownership interests, such entities nevertheless shall constitute only a single Party. Of all such entities constituting only a single Party, those entities owning at least seventy percent (70%) of the undivided ownership interest in the Parcel of such Party, shall:

- (1) Designate one of their number to act as agent, authorized to act for, and to bind and obligate, all of such entities constituting only a single Party, as the act and obligation of such Party; and
- (2) Notify the other Parties hereunder, in writing, of such designation as set out in the provisions of Article 24.

In the absence of such written designation, the acts of the Party whose Parcel came to be held in undivided ownership interests (whether or not such Party retains any interest in the Parcel in question) shall be binding upon all entities having an interest in said Parcel in question, until such time as written notice of such designation is served upon each of the other Parties as aforesaid.

Notwithstanding the foregoing, the term "Party" or "Parties" shall not include Hersch unless Hersch is specifically referenced in the provision.

Section 1.26 Perimeter Sidewalks

"Perimeter Sidewalks" means those paved sidewalk areas (other than within the Enclosed Mall) between the back of the curb line and either a building wall or landscaping adjacent to a building wall as the context may appropriately

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require; provided, however, sidewalks and curbs adjoining or on retaining walls or berms within grade changes shall not be considered Perimeter Sidewalks except to the extent they are adjacent to building walls or landscaping adjacent to building walls.

Section 1.27 Permissible Building Area

"Permissible Building Area" means the area(s) located within the Shopping Center Site and within the Building Limit Line shown on Exhibit "B" within which a building, together with Perimeter sidewalks, has been, will be, or may be constructed as hereinafter more fully provided.

Section 1.28 Permissible Deck Area

"Permissible Deck Area" shall mean the area(s) designated on page 3 of the Plot Plan attached as Exhibit B within which a Party may construct multi-level parking facilities.

Section 1.29 Permittees

"Permittees" means all Occupants and their respective officers, directors, employees, agents, partners, contractors, customers, visitors, invitees, licensees and concessionaires.

Section 1.30 Person

"Person" or "Persons" means individuals, partnerships, associations, corporations and any other form of business organization, or one or more of them, as the context may require.

Section 1.31 Project Architect

"Project Architect" means Ferebee, Walters & Associates or such other architect licensed to practice in the State of Virginia as may from time to time be designated by Developer and approved by the Majors.

Section 1.32 Reserved Parcels

Those parcels excluding Developer Parcel located within the Shopping Center Site owned by Developer, so desig-



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nated on the Plot Plan attached as Exhibit B, and more specifically described in Exhibit A, Part 5.

Section 1.33 Ring Road

"Ring Road" shall mean the area designated as such on page 1 of Exhibit C.

Section 1.34 Sears Improvements

"Sears Improvements" means the improvements defined in Section 7.2(b).

Section 1.35 Shopping Center Site

"Shopping Center Site" means the Developer Parcel, Developer Reserved Parcels, Sears Parcel, Thalhimers Parcel, M & R Parcel and Leggett Parcel as collectively described on Exhibit A, Part 6, and shown on Exhibit B.

Section 1.36 Supplemental Agreement(s)

"Supplemental Agreement(s)" means the separate agreement or agreements which have been entered into contemporaneously herewith between Developer and each Major. Each such agreement is herein referred to as a "Supplemental Agreement".

Section 1.37 Termination Date

"Termination Date" means the date on which the term of this REA shall terminate, as provided in Section 26.1.

Section 1.38 Thalhimers Improvements

"Thalhimers Improvements" means the Improvements defined in Section 7.2(c).

Section 1.39 Truck Facilities

"Truck Facilities" means those areas designated as such on the Plot Plan attached as Exhibit B which are to be used exclusively for shipping and receiving and truck accommodation in connection therewith, including:

- (a) truck docks, open or enclosed, and ramps and approaches thereto;
- (b) areas constructed for truck loading, unloading, parking or turn-arounds; and

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(c) areas exterior to building walls used for compacting, baling or handling trash.

Section 1.40 Town Agreement

Those agreements described in Exhibit E attached hereto and made a part hereof by reference.

Section 1.41 Town Work

That portion of the roadway and other work to be performed by governmental bodies and Developer as set forth in the Town Agreement.

ARTICLE 2

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EXHIBITS

Attached hereto and forming a part of this REA are the following exhibits, which, for the purpose of identification, have been signed or initialled by the Parties or their respective attorneys:

- Exhibit A, Part 1 - Legal Description of the Developer Parcel
- Exhibit A, Part 2 - Legal Description of the Sears Parcel
- Exhibit A, Part 3 - Legal Description of the Thalhimers Parcel
- Exhibit A, Part 4 - Legal Description of the M & R Parcel
- Exhibit A, Part 4.1 - Legal Description of the Leggett Parcel
- Exhibit A, Part 5 - Legal Description of Developer Reserved Parcel(s) (Drainage Lake Area(s), Buffer Zone, Access Parcels, Future Sears Gas Island and Reserved for Future Parking)
- Exhibit A, Part 6 - Legal Description of the Shopping Center Site
- Exhibit A, Part 7 - Legal Description of Fringe Parcels
- Exhibit B - Plot Plan
- Exhibit C - Survey
- Exhibit D - Minimum Technical Specifications
- Exhibit E - Town Agreement
- Exhibit F - Rules and Regulations and Maintenance Standards
- Exhibit G - Sign Criteria
- Exhibit H - Allied Will Cause Letter
- Exhibit I - Carter, Hawley, Hale Will Cause Letter

LANDAMERICA

ARTICLE 15

1496 PAGE 1922

Section 15.1 Required Parking Ratio

Except as otherwise provided in Article 18 or Article 27, each Party shall maintain on its Parcel, other than as to Developer on Developer's Reserved Parcel(s), at least five (5) automobile Car Spaces for every 1,000 square feet of Floor Area on its Parcel or such higher number of Car Spaces as may be required by the applicable zoning code. For purposes of this Section 15.1 only, Floor Area includes any Outdoor Selling Area.

Each Car Space shall have a minimum width of 8-1/2 feet on center measured at right angles to the side line of the parking space, except that all Car Spaces located totally inside the Parking Transitional Line shown on Sheet 1 of Exhibit "B" shall have a minimum width of 9 feet. Each parking lane or parking bay shall conform to the typical parking layout specified on Exhibit "B" or to a car space width, bay space and drive lane layout which in each instance either equals or exceeds the typical parking layout specified on Exhibit "B."

Section 15.2 Charges for Parking; Employee Parking Areas

No charge of any type shall be made to or collected from any Occupants or Permittees for the right to park vehicles in the Parking Area, except such Common Area maintenance costs as may be provided for in any Supplemental Agreements or in any Lease with any Occupant.

The Parties may from time to time, by separate agreement, designate certain sections within the Parking Area for non-exclusive automobile parking use by the Occupants and their employees, agents, contractors, licensees, and concessionaires. Each Party shall use its best efforts to



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cause its employees and the employees of its tenants and subtenants, contractors, licensees and concessionaires to use only the designated parking sections. No such designation shall be binding upon any Party who has not consented, in writing, thereto. No such designated area shall be provided within 300 feet of any entrance of any Main Building or within 300 feet of any entrance to the Enclosed Mall without the consent of the Party on whose Parcel such parking is intended to be provided and the consent of any Party whose entrance would be within 300 feet to such designated area. Absent such a separate consent, each Party agrees that the Occupants of its Parcel and its employees, agents, contractors, licensees and concessionaires shall park only on its Parcel.

#### Section 15.3 Use of Parking Area

Except as otherwise expressly provided in Articles 5, 13, 14 and 15 hereof, no Party shall use or permit the use of the Parking Area on its Parcel for any purpose other than pedestrian movement and the parking and passage of motor vehicles. No Party shall grant any parking rights to anyone other than Permittees without the consent of the other Parties hereto, such consent not to be unreasonably withheld.

#### Section 15.4 Changes to Parking Area

Each Party shall have the right, from time to time, to make reasonable changes and modifications in and to the Parking Area located on each Party's respective Parcel provided, however, that no such changes and modifications may be made which (i) shall adversely affect the orderly flow of pedestrian and vehicular traffic in the Center or render any Parcel or the buildings thereon less accessible to such traffic, (ii) reduce the number of Car Spaces on the Parcel in question below the number required to be maintained in order to meet the requirements of Section 15.1 hereof (iii) would be inconsistent with the requirements of Exhibit "D" or would result in the Parking Area lighting being inconsistent

LANDAMERICA

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with the requirements of Section 14.3 hereof, or (iv) would result in multi-level parking other than as provided in Section 15.5, and further provided that no Party shall, at any time, have any right to relocate or materially modify the Ring Road or Access Roads leading to and from the public roadways except as otherwise provided in Section 10.3.

LANDAMERICA

Section 15.5 Multi-Level Parking.

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In the event that any Party requires or desires additional parking for any reason whatsoever, including, without limitation, as a result of a permitted expansion of its Building in accordance with the terms of this PEA or condemnation, that Party or those Parties, as the case may be, shall be entitled to provide the necessary additional parking by constructing (as and where shown on Exhibit "B" attached hereto, but not otherwise), at its or their expense, on its or their own Parcel or respective Parcels, or the Parcel or Parcels of other Parties subject to the written consent of such other Party or Parties which consent may be withheld in such other Party's or Parties' sole discretion, one or more of the sections of the parking deck and appurtenant improvements (including, without limitation, access ramps and connecting bridges, all of which shall be deemed to be included in the term "parking deck" as hereinafter used) within the permissible Parking Deck area shown hatched on Page 3 of Exhibit "B" attached hereto, as shown thereon and not otherwise, subject to the following terms, conditions and limitations:

(a) The plans and specifications for construction of the parking deck, or section thereof, shall be subject to the written approval of the Parties, which approval shall not be unreasonably withheld. Provided, however, notwithstanding anything to the contrary contained herein, if only one (1) Party desires to erect a parking deck, it shall erect a section thereof only on its own Parcel as shown on Exhibit "B" attached hereto and no Party shall erect any portion or section of the parking deck on the Parcel of any other Party unless the Developer and the holders of the fee simple and leasehold titles to such Parcel shall consent thereto in writing, which consent may be unreasonably withheld.

(b) The Party or Parties constructing the parking

deck or section or contributing to the cost thereof ["Deck Owner(s)"] must perform such construction, or cause the same to be performed, in a manner that no liens, including mechanic's or materialmen's liens, are placed on the land on which the parking deck is constructed. The Deck Owner(s), at its sole expense, as part of construction shall relocate any utilities as required by construction of the parking deck or section in such a manner as not to unreasonably interfere with the continued operation of the Center and shall repair any damage caused by such relocation.

(c) Prior to commencement of construction, the Deck Owner(s) must agree in writing in form and content reasonably acceptable to the Parties holding the fee simple and leasehold titles to the land upon or over which the parking deck or section is to be located, to maintain, restore, repair, insure and pay all real property taxes and assessments upon the parking deck or section.

(d) Construction of such section or sections of the parking deck shall be performed in a good and workman-like manner and shall be expeditiously completed with a minimum of interruption to existing parking facilities and access in compliance with all laws, ordinances, orders, rules, regulations and requirements applicable thereto and with the requirements of this REA. All such construction work shall comply with the requirements of all insurance policies affecting the Parcels on which construction occurs and with the orders, rules and regulations of the National Fire Protection Association or any other body exercising similar functions. The Deck Owner(s) shall promptly pay all costs and expenses of such construction; shall discharge all liens filed against the Parcel or Parcels on which the parking deck or section is located arising out of such

construction, and shall procure and pay for all permits and licenses required in connection with such construction. If several Parties require or desire the construction of such parking deck or sections thereof on their respective Parcels or the Parcel or Parcels of other Parties, such Deck Owner(s) shall cooperate in the selection and joint employment of one contractor to perform all such work and such Deck Owner(s) shall contribute to the cost of such parking deck as they may agree, except that each Party shall bear the cost of any connecting bridge which directly connects its Building to the parking deck. Construction of said parking deck also shall be subject to all other construction provisions contained in Article 5 of this REA to the extent that the same are applicable to such construction.

(e) The Deck Owner(s) shall provide all interested Parties with a detailed statement of total construction cost within thirty (30) days after the parking deck or section is placed in use.

(f) If and when said deck or section or sections thereof is constructed, the same shall be and become part of the Common Areas in the Center and part of the Improvements upon the Parcel upon or over which such deck or section thereof is erected, and the same shall be subject to all of the obligations respecting Common Area and to the reciprocal easement rights of all Parties as provided under Article 10 of this REA, which easement rights shall be automatically superior to any lien against all or part of the Shopping Center Site from and after the recording of this REA; provided, however, unless otherwise agreed in writing by the Deck Owners, the parking spaces on the deck or section thereof constructed by them shall not be utilized by any other Party for purposes of satisfying its parking



ratio requirements. Such easement rights shall include <sup>1496</sup> ~~1928~~ surface and subsurface easements for the support of the parking deck and air space easements for the use of the air space above the horizontal and inclined planes of the under side of said parking deck. Upon request of any Party the Deck Owner(s) shall obtain Subordination Agreements from any holder of a lien on the property on which the deck or section or sections is located, confirming that such liens are subordinate to the reciprocal easement rights created by this Article 15 and Article 10 hereof.

(g) All parking decks shall contain directional and other signing reasonably requested by other Parties.

## COMMONWEALTH OF VIRGINIA

## CITY OF ROANOKE

## JOINT DRIVEWAY EASEMENT

THIS JOINT DRIVEWAY EASEMENT is made and entered into as of this 15<sup>th</sup> day of February, 1996, by and between HERSCH ASSOCIATES LIMITED PARTNERSHIP, a North Carolina limited partnership ("Hersch"), and SHAKERS RESTAURANT CORPORATION, a Virginia corporation ("Shakers").

## RECITALS

A. Hersch is the owner in fee simple of a tract of land located on Valley View Boulevard West, N.W., in the City of Roanoke, which is shown as "Parcel 7C-2A" on that map recorded in Map Book 1 at Page 1038 in the Office of the Clerk of Circuit Court for the City of Roanoke, Virginia (the "Hersch Parcel").

B. Shakers is the owner in fee simple of a tract of land located adjacent to and contiguous with the northeastern boundary of the Hersch Parcel, which is shown as "Parcel 7C-1" on that map recorded in Map Book 1 at Page 717 in the Office of the Clerk of Circuit Court for the City of Roanoke, Virginia (the "Shakers Parcel").

C. The Hersch Parcel and the Shakers Parcel share a curb cut onto Valley View Boulevard West, and Shakers has constructed a paved driveway providing vehicular access from Valley View Boulevard West to the Shakers Parcel, which driveway is located partially on the Shakers Parcel, and partially on the Hersch Parcel. The driveway is located within a thirty foot (30') wide strip of land along the common boundary of the Hersch Parcel and the Shakers Parcel, as shown on Exhibit A attached hereto (the "Easement Area").

D. Hersch and Shakers have agreed to convey to one another a reciprocal non-exclusive easement over the Easement Area, for the purpose of using, maintaining and replacing the common curb cut and driveway and related improvements, on the terms and conditions set forth in this Joint Driveway Easement (this "Agreement").

NOW, THEREFORE, in consideration of the premises and for the purposes aforesaid, the parties hereto agree for themselves, their successors and assigns as follows:

1. Grant of Driveway Easement over Hersch Parcel. Hersch hereby grants to Shakers, its successors and assigns, a permanent non-exclusive driveway easement over the portion of the Easement Area located on the Hersch Parcel, for the purpose of vehicular access, ingress and egress between Valley View Boulevard West and the Shakers Parcel, and for the purpose of maintaining, repairing and reconstructing the paved areas, curbs and gutters and related

roadway improvements located within the Easement Area, subject to the other terms and conditions of this Agreement.

2. Grant of Roadway Easement over Shakers Parcel. Shakers hereby grants to the Hersch, its successors and assigns, a permanent non-exclusive driveway easement over the portion of the Easement Area located on the Shakers Parcel, for the purpose of vehicular access, ingress and egress between Valley View Boulevard West and the Hersch Parcel, and for the purpose of maintaining, repairing and reconstructing the paved areas, curbs and gutters and related roadway improvements located within the Easement Area, subject to the other terms and conditions of this Agreement.

3. No Obstructions. Each party agrees that it will not erect any permanent improvements over, across or within the Easement Area, or any other surface obstructions within the Easement Area, that obstructs or interferes with paved access between Valley View Boulevard West and each Parcel. The foregoing provisions shall not prohibit the reasonable designation and relocation of traffic lanes, nor shall it be deemed to require Shakers to remove any existing improvements on the Shakers Parcel. In addition, each party may block traffic on its Parcel as may be reasonably required for the purpose of repairing or replacing the paved areas on its Parcel. If possible, however, such action shall be taken on a day or at a time when the buildings on the other Parcel are not open for business, and in any event only after prior written notice to the owner of the other Parcel and to the Roanoke Regional Airport Commission c/o Executive Director, 5302 Aviation Drive, Roanoke, Virginia 24022.

4. Roadway Maintenance. The owner of the Shakers Parcel shall be responsible, at its sole expense, for the routine maintenance of the roadways and related improvements located within the Easement Area, including all paved surfaces, pavement markings, directional signs, curbs and gutters, and storm drainage inlets. This maintenance obligation shall include, without limitation, the following obligations imposed upon Shakers under paragraph 2 of the Deed conveying the Shakers Parcel to Shakers, recorded in Deed Book 1579 at Page 1074 in the Office of the Clerk of Circuit Court for the City of Roanoke, Virginia:

a. To keep and maintain all sidewalks, roadways, and paved parking surfaces in good, safe, clean and sightly condition at all times.

b. To remove promptly, to the extent reasonably practicable, snow, ice, surface water and debris.

c. To keep all directional signs, pavement signs, and parking lot striping distinct and legible.

Notwithstanding the provisions of the preceding paragraph, the owner of the Hersch Parcel shall be responsible, at its expense, for all necessary repairs to the paved surfaces located within the

Easement Area. This maintenance obligation shall include, without limitation, the obligation to repair potholes or pavement cracks, and to resurface or repave the paved areas within the Easement Area when reasonably necessary.

Notwithstanding the preceding provisions of this paragraph 4, each party shall be solely responsible, at its expense, for any maintenance primarily necessitated by the negligence or wrongful intentional acts of such party, its agents, contractors or employees.

If the owner of either Parcel fails to perform its maintenance obligation with respect to the roadway improvements within the Easement Area, except when the necessary maintenance is the result of the negligence or wrongful intentional acts of the owner of the other Parcel, or its agents, contractors or employees, and if such failure or default continues for a period of thirty (30) days after the defaulting owner has received written notice specifying the nature of the default or failure from the owner of the other Parcel, then the owner of the other Parcel shall have the right to perform any necessary maintenance or repairs, or to cause them to be performed, at the expense of the defaulting owner. Provided that such maintenance work is bid on by at least two (2) responsible contractors and the lowest bidding contractor performs the maintenance work, the cost of the maintenance work will be deemed authorized and incurred by the defaulting owner. The defaulting owner shall reimburse the owner of the other Parcel within thirty (30) days after receipt of an invoice for the completed maintenance work, accompanied by a copy of the bids for such work from at least two (2) contractors. If the defaulting owner fails to pay such costs within the thirty (30) day period, the owner of the other Parcel shall be entitled to file a mechanics lien against the Parcel of the defaulting owner in the amount of such invoice, together with interest thereon at the rate of twelve percent (12%) per annum or at the highest rate of interest permitted by law, whichever is less; and the owner of the other Parcel may recover that amount plus interest in an action at law, all in accordance with Chapter 43 of the Code of Virginia, as amended. In addition, the owner of the other Parcel shall have any and all other remedies available to it at law or in equity for such a default in the maintenance obligation.

5. No Cross-Parking Easements. Nothing in this Agreement shall be deemed to grant to the owner of either Parcel any rights to use the parking areas located on the other Parcel for the parking of motor vehicles.

6. No Rights in Public or Third Parties. This Agreement is not intended and shall not be construed to grant any rights or privileges to the public in general, or to any third parties except as provided in paragraph 3 above and paragraph 7 below; provided, however, that Hersch and Shakers recognize and agree that this Joint Driveway Easement is subject to the terms and conditions of

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

The foregoing instrument was acknowledged before me this 15 day of Febraury, 1996, by Henry J. Faison, as General Partner of HERSCH ASSOCIATES LIMITED PARTNERSHIP, a North Carolina limited partnership.

Barbara J. Simonovic

Notary Public

My commission expires: My Commission Expires May 15, 1996

COMMONWEALTH OF VIRGINIA

COUNTY (OR CITY) OF

Lynchburg

I, Flora Rosalind Christensen, a Notary Public in and for the State and County (or City) aforesaid, do certify that John Buckles, whose name, as President of SHAKERS RESTAURANT CORPORATION, is signed to the writing above, bearing date on the 15<sup>th</sup> day of February, 1996, has acknowledged the same before me in my County (or City) aforesaid.

Given under my hand and official seal this 21<sup>st</sup> day of Febraury, 1996.

My term of office expires on My Commission Expires October 31, 1999

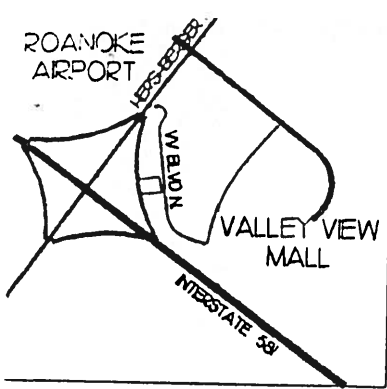
Flora Rosalind Christensen

Notary Public

[NOTARIAL SEAL]



ROANOKE  
AIRPORT

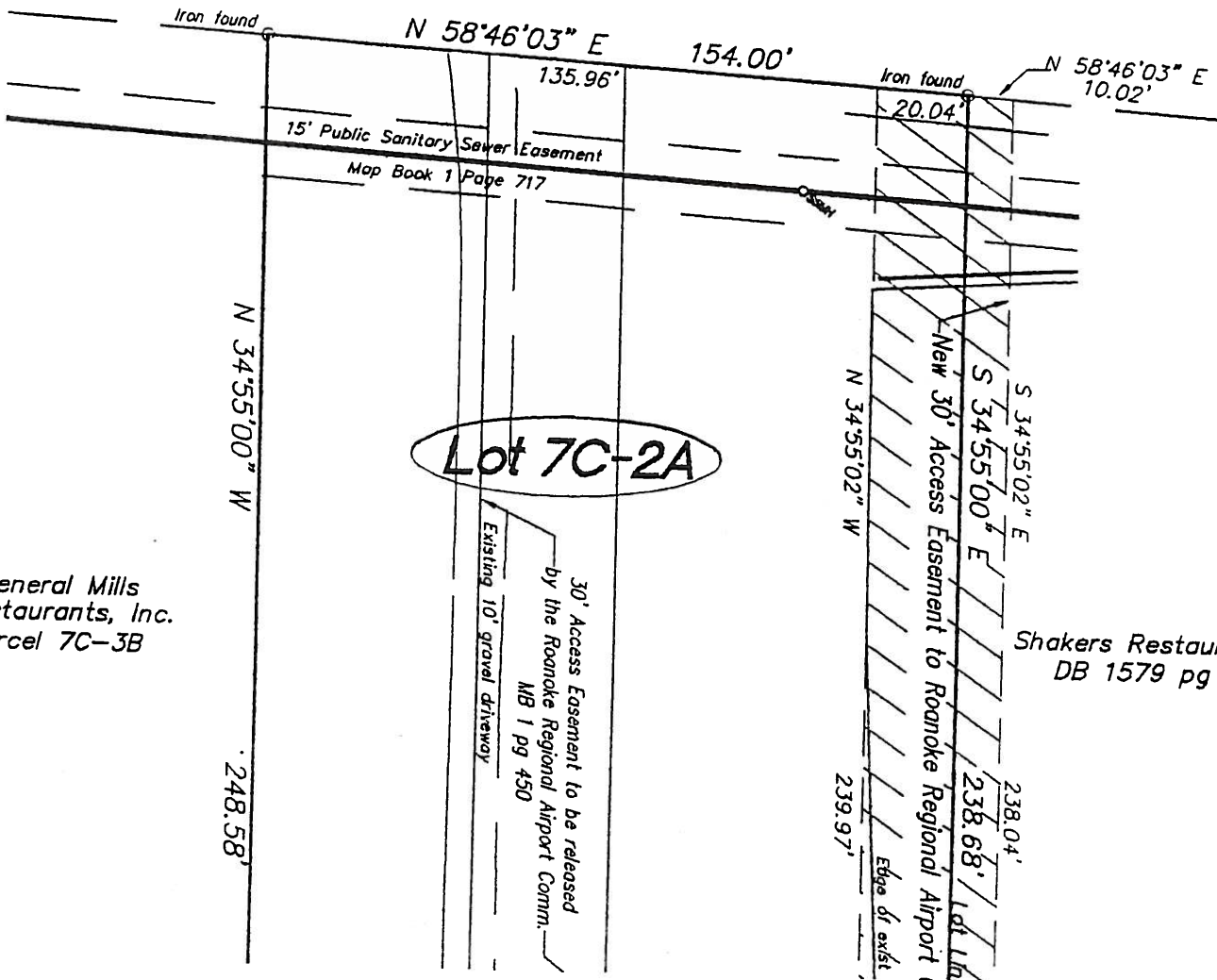
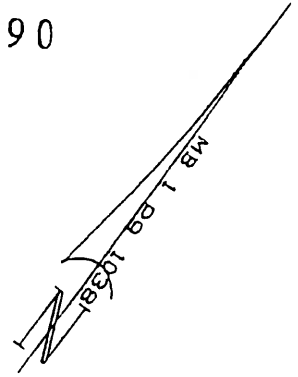


VICINITY MAP  
NOT TO SCALE

EXHIBIT A

BK1762PG 00390

Roanoke Regional Airport Commission  
Deed Book 1564 Page 662  
Airport Clear Zone  
undeveloped



General Mills  
Restaurants, Inc.  
Parcel 7C-3B

Shakers Restaurant Corp.  
DB 1579 pg 1074

039 S. TAX \$ .15  
 038 S. ADD TAX \$   
 214 C. TAX \$ .05  
 220 C. ADD. TAX \$   
 301 FEE \$ 15.00  
 212 TRANSFER \$   
 8 CO. ADD TAX \$   
 TOTAL \$ 15.20

In the Clerk's Office of the Circuit Court for the City of  
 Roanoke, Va., on April 24, 1996,  
 this instrument was presented, with the Certificate of  
 acknowledgment thereto annexed and admitted to  
 record at 4:14 o'clock, 2 p.m. I hereby certify  
 that the tax imposed under Sec. 58.1-801 and Sec.  
 58.1-802 have been paid to this office.

Teste: Arthur B. Crush, III, Clerk

By: Kathy Hunsinger, Deputy Clerk

MAILED OR DELIVERED TO: W B J H.

the Relocation of Access Easement dated December 18, 1995, recorded immediately prior to this document.


7. Covenants Running With Land. The obligations, easements and conditions contained in this Agreement are covenants running with the land; and they are made by the parties for the benefit of themselves, each future owner of fee simple title to all or part of the Hersch Parcel or the Shakers Parcel, and the grantees, successors, assigns, lessees, agents, employees and invitees of each of the foregoing.

8. Miscellaneous. This Agreement has been entered into, and shall be construed in accordance with, the laws of the Commonwealth of Virginia. This Agreement sets forth the entire agreement of the parties with respect to the matters set forth herein, and supersedes any prior written or oral understandings between the parties with respect to those matters.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the day and year first above written.

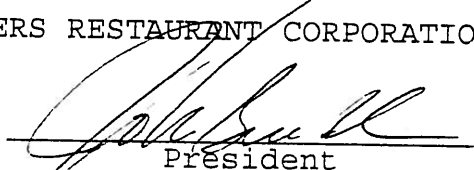
HERSCH:

HERSCH ASSOCIATES LIMITED  
PARTNERSHIP, a North Carolina  
limited partnership

By:  (SEAL)  
Henry J. Faison, General  
Partner

SHAKERS:

SHAKERS RESTAURANT CORPORATION

By:   
President

[CORPORATE SEAL]

BK1762PG 00370

## RELOCATION OF ACCESS EASEMENT

THIS RELOCATION OF ACCESS EASEMENT ("Relocation Agreement") is made as of the 18<sup>th</sup> day of December, 1995 by and between HERSCH ASSOCIATES LIMITED PARTNERSHIP, a North Carolina limited partnership whose address is 1900 Interstate Tower, 121 West Trade Street, Charlotte, North Carolina ("Hersch"), SHAKERS RESTAURANT CORPORATION, a Virginia corporation whose address is 2095 Langhorne Road, Suite C, Lynchburg, Virginia 24501 ("Shakers") and THE ROANOKE REGIONAL AIRPORT COMMISSION, a body corporate organized under the laws of the Commonwealth of Virginia ("Grantee"), acting pursuant to Resolution No. 04-032096.

GRANTEE IS EXEMPT PURSUANT TO THE PROVISIONS OF SECTIONS 58.1-811.A.3. AND 58.1-811.C.3 OF THE CODE OF VIRGINIA (1950), AS AMENDED FROM PAYMENT OF RECORDATION TAXES.

W I T N E S S E T H

WHEREAS, Hersch is the owner of a parcel of land (the "Hersch Parcel") located on Valley View Boulevard West, N.W., in the City of Roanoke, which is shown as "Parcel 7C-2A" on that map recorded in Map Book 1 at Page 1038 in the Office of the Clerk of Circuit Court for the City of Roanoke, Virginia; and

WHEREAS, Shakers is the owner of a parcel of land (the "Shakers Parcel") located adjacent to and contiguous with the northeastern boundary of the Hersch Parcel, which is shown as "Parcel 7C-1" on that map recorded in Map Book 1 at Page 717 in the Office of the Clerk of Circuit Court for the City of Roanoke, Virginia; and

WHEREAS, Grantee is the owner of a parcel of land located adjacent to and contiguous with the northwestern boundary of the Hersch Parcel and the Shakers Parcel, identified as Airport Clear Zone, acquired by deed recorded in Deed Book 1564 at Page 662 in the Office of the Clerk of Circuit Court for the City of Roanoke, Virginia (the "Adjacent Land"); and

WHEREAS, an access easement has previously been granted across a portion of the Hersch Parcel, which access easement is shown on that map recorded in Map Book 1 at Page 450 in the Office of the Clerk of Circuit Court for the City of Roanoke, Virginia (the "Original Access Easement"); and

WHEREAS, Hersch intends to develop the Hersch Parcel, and Hersch, Shakers and Grantee have agreed to relocate the Original Access Easement along the common boundary of the Hersch Parcel and the Shakers Parcel, as more particularly provided herein.

NOW, THEREFORE, for and in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Grant of Relocated Access Easement And Construction of Connecting Road. Hersch and Shakers (collectively, "Grantors") hereby grant, give, convey and transfer to Grantee, with General Warranty and English covenants of title, a non-exclusive perpetual easement across and over the Easement Area (as hereinafter defined) for the purposes of ingress, egress, and regress between the right-of-way of Valley View Boulevard West, N.W. and the Adjacent Land, for use by Grantee, its employees, visitors, agents, contractors,



invitees and representatives, including, without limitation, Federal Aviation Administration employees and contractors. The Easement Area shall consist of a thirty (30) foot wide strip of land running from the northern boundary of the right-of-way of Valley View Boulevard West, N.W. to the southern boundary of the Adjacent Land, which strip is located partially on the northeastern portion of the Hersch Parcel and partially on the southwestern portion of the Shakers Parcel, and is more particularly described on Exhibit A attached hereto and made a part hereof. Hersch, pursuant to a right of entry to be granted by Grantee, covenants and agrees to grade and gravel in a mutually acceptable location a roadway connecting the Easement Area to the existing road on the Adjacent Land. Grantee shall have no rights in or to any property owned by Grantors other than the easement granted herein. Except as set forth herein, each Grantor reserves the right to fully utilize, without restriction, the Easement Area for the benefit of itself, its employees, visitors, agents, customers and invitees, and to grant additional easements to third parties through the Easement Area, subject to and so long as: (i) any such use or the use of such easements does not in any way interfere with Grantee's use and enjoyment of the easement rights hereby granted; and, (ii) neither Grantor shall allow parking, standing, loading or unloading or any other such use in the Easement Area, or make or allow any changes in the Easement Area that would deprive or interfere in any way with Grantee's use of the Easement Area. Hersch and Shakers further covenant and agree to post and maintain permanent signage for the Easement Area adequate under the laws of the Commonwealth

of Virginia to authorize the lawful removal, towing, or immobilization of vehicles parked in or occupying the Easement Area. Hersch and Shakers further authorize and assign to Grantee as the owner of the easement conveyed herein the non-exclusive right to have such vehicles removed, towed, or immobilized.

2. Maintenance of Easement Area. Shakers shall clear (including removal of snow and ice) and maintain the paving and other improvements located within the Easement Area at its sole cost and expense, and Hersch shall repair and replace such improvements as necessary at its sole cost and expense. Each Grantor shall indemnify, defend, and hold Grantee harmless from any claim or cause of action arising out of the negligent performance or failure to perform such obligations. If either Hersch or Shakers (the "Defaulting Owner") fails to maintain or cause to be maintained the roadway improvements within the Easement Area as provided above, and such failure or default continues for a period of thirty (30) days after it has received written notice specifying the nature of the default or failure from the owner of Grantee, then Grantee shall have the right to perform any necessary maintenance or repairs, or to cause them to be performed, at the expense of the Defaulting Owner. Provided that such maintenance work is bid on by at least two (2) responsible contractors and the lowest bidding contractor performs the maintenance work, the cost of the maintenance work will be deemed authorized and incurred by the Defaulting Owner. The Defaulting Owner shall reimburse the Grantee within thirty (30) days after receipt of an invoice for the completed maintenance work, accompanied by a copy of the bids for such work from at least two

(2) contractors. If the Defaulting Owner fails to pay such costs within the thirty (30) day period, Grantee shall be entitled to file a mechanics lien against the Parcel of the Defaulting Owner in the amount of such invoice, together with interest thereon at the rate of twelve percent (12%) per annum or at the highest rate of interest permitted by law, whichever is less; and the Grantee owner may recover that amount plus interest in an action at law, all in accordance with Chapter 43 of the Code of Virginia, as amended. In addition, the Grantee shall have any and all other remedies available to it at law or in equity for such a default in the maintenance obligation.

3. Continuous Access by Grantee Across Parcel to Adjacent Land. Notwithstanding any provision of the Joint Driveway Easement dated February 15, 1996 and recorded immediately following this document, Hersch covenants and agrees that Hersch shall maintain for Grantee's use and benefit at all times, including without limitation, during any periods of construction, continuous, usable access across the Hersch Parcel between the right-of-way of Valley View Boulevard West, N.W. to the existing road on the Adjacent Land at least comparable to the access in existence as of the date of this Relocation of Access Easement. Hersch and Shakers expressly covenant to and agree with Grantee that at no time shall Grantee be totally blocked from utilizing the Easement Area without prior notice to and approval by Grantee or alternative access.

4. Quitclaim of Original Access Easement. Subject to the terms and conditions contained herein, Grantee hereby quitclaims to Hersch, and its successors and assigns, the access easement over

the Hersch Parcel created by the map recorded in Map Book 1 at Page 450 in the Office of the Clerk of Circuit Court for the City of Roanoke, Virginia.

5. Recording Costs. Hersch shall be responsible for any costs applicable to the proper recording of this Relocation Agreement.

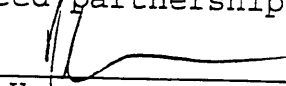
6. Governing Law. This Relocation Agreement has been entered into under, and shall be construed in accordance with, the laws of the Commonwealth of Virginia.

7. Successors and Assigns. The rights, obligations, and covenants contained in this Relocation Agreement shall run with the land and shall be binding upon, and inure to the benefit of, the parties hereto and their respective lessees, successors and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first above written.

HERSCH:

HERSCH ASSOCIATES LIMITED  
PARTNERSHIP, a North Carolina  
limited partnership

By:  (SEAL)  
Henry J. Faison, General  
Partner

SHAKERS:

SHAKERS RESTAURANT CORPORATION

By:   
President

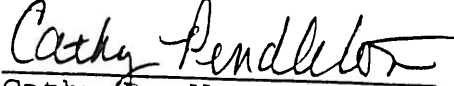
[CORPORATE SEAL]

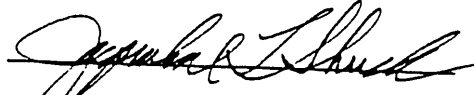
[signatures continue]

GRANTEE:

THE ROANOKE REGIONAL AIRPORT  
COMMISSION

Attest:

  
Cathy Pendleton  
Commission Secretary

By:  (SEAL)  
Jacqueline L. Shuck  
Executive Director



STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

The foregoing instrument was acknowledged before me this 18 day of Dec, 1995, by Henry J. Faison, as General Partner of Hersch Associates Limited Partnership, a North Carolina limited partnership.

Barbara J. Amancio  
Notary Public

My commission expires: \_\_\_\_\_

My Commission Expires May 15, 1996

COMMONWEALTH OF VIRGINIA

COUNTY (OR CITY) OF Lynchburg

I, Flora Rosalind Christensen, a Notary Public in and for the State and County (or City) aforesaid, do certify that John Buckles, whose name, as President of Shakers Restaurant Corporation, is signed to the writing above, bearing date on the 18<sup>th</sup> day of December, 1995, has acknowledged the same before me in my County (or City) aforesaid.

Given under my hand and official seal this 21<sup>st</sup> day of February, 1996.

My term of office expires on \_\_\_\_\_ My Commission Expires October 31, 1999

Flora Rosalind Christensen  
Notary Public

[NOTARIAL SEAL]

STATE OF VIRGINIA

CITY OF ROANOKE

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of March, 1996, by Jacqueline Shuck, as Executive Director of The Roanoke Regional Airport Commission.

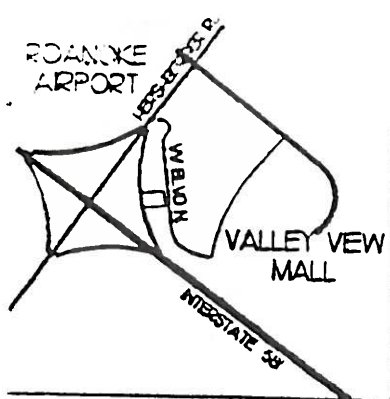
Catherine S. Pendleton  
Notary Public

My commission expires: May 31, 1998

Approved as to form:

By: Mark Allan Williams  
Mark Allan Williams, General Counsel  
Roanoke Regional Airport Commission

ROANOKE  
AIRPORT

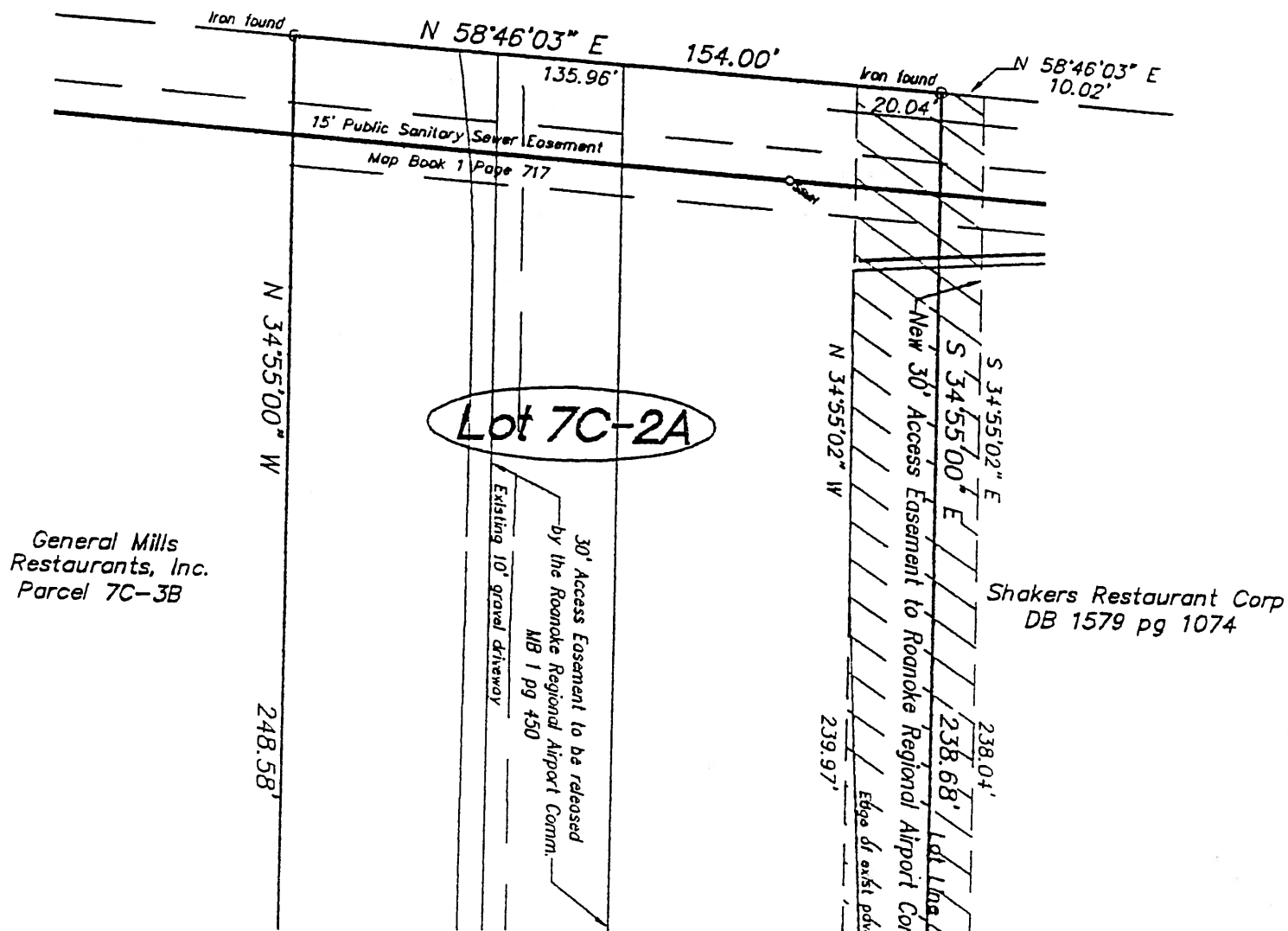
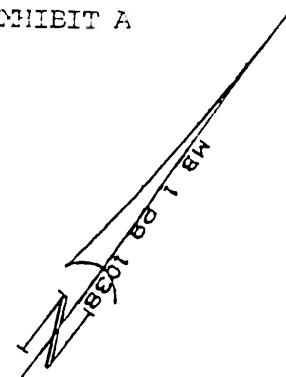


VICINITY MAP  
NOT TO SCALE

BK1762PG 00379

EXHIBIT A

Roanoke Regional Airport Commission  
Deed Book 1564 Page 662  
Airport Clear Zone  
undeveloped



039 S. TAX	\$	<u>.15</u>
038 S. ADD TAX.	\$	
214 C. TAX	\$	<u>.05</u>
220 C. ADD. TAX	\$	
301 FEE	\$	<u>19.00</u>
212 TRANSFER	\$	
8 CO. ADD TAX	\$	
TOTAL	\$	<u>19.20</u>

In the Clerk's Office of the Circuit Court for the City of  
Roanoke, Va., on Apr 24, 19 96  
this instrument was presented, with the Certificate of  
acknowledgment thereto annexed and admitted to  
record at 4:12 o'clock, P.m. I hereby certify  
that the tax imposed under Sec. 58.1-801 and Sec.  
58.1-802 have been paid to this office.

Teste: [Signature] Arthur B. Crush, III, Clerk  
By: [Signature] Deputy Clerk

MAILED OR DELIVERED TO: W R & H.

RECEIVED

APR 20 2015

CONCEPT PLAN  
FOR  
MATTRESS FIRM  
ROANOKE, VIRGINIA

PROJECT NO. 2014122  
LAT.  
LONG.  
DATE: 3/30/2015  
DRAWN BY: RK1  
CHECKED BY: DB

SHEET NO.  
1 OF 1

SOURCE OF TITLE:  
SHAKERS RESTAURANT CORPORATION  
TM #2380110  
DB 1579, PG 1074

SUBJECT PLAT OF REFERENCE:  
PLAT BY F. DONALD LAWRENCE & ASSOCIATES, P.A. TITLED  
"PLAT OF SURVEY SHOWING SUBDIVISION FOR HERSCH  
ASSOCIATES," DATED DECEMBER 28, 1987 AND RECORDED IN MAP  
BOOK 1, PAGE 717.

TOTAL LOT AREA = 2.00 AC  
IMPERVIOUS AREA = 1.59 AC (79.5%)  
PERVIOUS AREA = 0.41 AC (20.5%)

LOT AREA:  
EXISTING LOT: 2.00 AC. (87,120 SF)

PROPOSED USE: RETAIL/SALES

PARKING SPACES:  
28 PARKING SPACES REMOVED  
41 PARKING SPACES ADDED  
13 (NET) PARKING SPACES ADDED  
SHAKERS SPACES PROVIDED: 112  
NEW PARCEL SPACES PROVIDED: 23  
TOTAL SPACES PROVIDED: 135

STORMWATER MANAGEMENT: THERE WILL BE A SLIGHT INCREASE IN IMPERVIOUS AREA. AN  
UNDERGROUND STORMWATER DETENTION PIPE & A MECHANICAL  
FILTER ARE PROPOSED TO CAPTURE AND TREAT ADDITIONAL  
RUNOFF FROM THE INCREASE IN IMPERVIOUS AREA.

FLOOD PLAIN: THE AREA SHOWN HEREON IS LOCATED ON FEMA MAP PANEL  
#5161C0162G DATED SEPTEMBER 28, 2007 AND IS NOTED AS HAVING  
NO SPECIAL FLOOD HAZARD AREAS ON THIS PANEL.



PRELIMINARY

40 20 0 40 80  
GRAPHIC SCALE IN FEET  
1" = 40'























# ZONING DISTRICT MAP

1909 Valley View Blvd NW;  
Official Tax Parcel: 2380110

-  Area to be Rezoned
-  Conditional Zoning

## Zoning

-  RA (Residential-Agriculture)
-  R-12 (Res. Single-Family)
-  R-7 (Res. Single-Family)
-  R-5 (Res. Single-Family)
-  R-3 (Res. Single-Family)
-  RM-1 (Res. Mixed Density)
-  RM-2 (Res. Mixed Density)
-  RMF (Res. Multi-Family)
-  CN (Commercial-Neigh)
-  CG (Commercial-General)
-  CLS (Commercial-Large Site)
-  I-1 (Light Industrial)
-  I-2 (Heavy Industrial)
-  D (Downtown)
-  MX (Mixed Use)
-  IN (Institutional)
-  ROS (Rec & Open Space)
-  AD (Airport Dev)
-  MXPUD (Mixed Use Planned Unit Dev)
-  INPUD (Institutional Planned Unit Dev)
-  IPUD (Industrial Planned Unit Dev)
-  UF (Urban Flex)

